



April 4, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-1354

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145154.

The Texas Department of Public Safety (the "department") received a request for information "regarding the collection, testing and registration . . . into the CODIS system" of the DNA of seven named individuals, identified by the requestor as "inmates." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

You argue that to the extent the department holds information responsive to the request, such information must be withheld from the requestor under section 552.101 in conjunction with subchapter G of chapter 411 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

Subchapter G of chapter 411 of the Government Code pertains to a "DNA Database System." Section 411.142 provides that the department's director "shall record DNA data and establish and maintain a computerized database that serves as the central depository in the state for DNA records." Gov't Code § 411.142(a). Further, the database "must be compatible with

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the national DNA identification index system (CODIS) used by the FBI to the extent required by the FBI to permit the useful exchange and storage of DNA records or information derived from those records.” *Id.* § 411.142(f). Section 411.148 requires the Texas Department of Criminal Justice to obtain DNA samples of certain inmates and to send such samples to the department director for analysis. *Id.* § 411.148. Thus, we understand that to the extent information responsive to the request exists, such information is contained in the department’s database created and maintained pursuant to subchapter G of chapter 411 of the Government Code.

Section 411.153 provides in pertinent part that a “DNA record stored in the DNA database is confidential and is not subject to disclosure under the open records law, chapter 552 [of the Government Code].” Gov’t Code § 411.153(a). Pursuant to section 411.147, the department may release DNA record information only where specifically authorized. *See id.* § 411.147(c), (d), (e). The department’s director, by rule, shall establish procedures “to prevent unauthorized access to the DNA database[.]” *Id.* § 411.147(a). Where release is authorized, the department’s director, by rule, shall also establish procedures for release *Id.* None of the release provisions in subchapter G appears to be applicable in this instance, and you have not informed this office of any department rule, procedure, or other provision of law that authorizes or permits the release of the information at issue to the present requestor. Accordingly, we conclude that the department must withhold any information responsive to the request under section 552.101 in conjunction with section 411.153 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

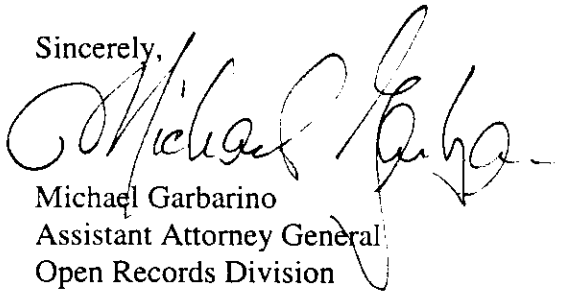
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 145154

Encl. Submitted documents

cc: Ms. Mary Ann Razzuk
WFAA Communications Center
606 Young Street
Dallas, Texas 75202
(w/o enclosures)